

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 12, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JARED ANTHONY WINTERER,

Plaintiff,

v.

UNITED STATES,

Defendants.

NO: 2:24-CV-00195-RMP

ORDER DENYING CONSTRUED
MOTION FOR REVISION,
DENYING LEAVE TO PROCEED *IN*
FORMA PAUPERIS AND
DISMISSING CASE

By Order filed July 8, 2024, the Court directed *pro se* Plaintiff Jared Anthony Winterer, a prisoner currently housed at Washington Corrections Center in Shelton, Washington, to show cause why his application to proceed *in forma pauperis* should be granted in this case, ECF No. 9. In response, Plaintiff filed a document titled “Reconsideration of strikes/IFP,” which the Court liberally will construe as a “Motion for Revision” under Fed. R. Civ. P. 54(b) of the Order to Show Cause, two documents titled “Motion to show cause/Amended Complaint,” and a third document titled “Clerk please scan this. Law Librarian was supposed to on 8-23-24 but didn’t and won’t by 9-6-24,” which the Court construes as

ORDER DENYING CONSTRUED MOTION FOR REVISION, DENYING
LEAVE TO PROCEED *IN FORMA PAUPERIS* AND DISMISSING CASE -- 1

1 Plaintiff's Responses to the Order to Show Cause. ECF Nos. 10, 11, 12, and 13.

2 The first Response was received electronically on August 27, 2024, before
3 the September 6, 2024 deadline. ECF No. 11. The other two Responses were
4 received via the U.S. Postal Service on August 29, 2024, and September 3, 2024,
5 respectively. ECF Nos. 12 and 13. The Court reminds Plaintiff that pursuant to
6 General Order 16-35-1, participation in the E-Filing Program is mandatory for all
7 prisoner litigants incarcerated at facilities participating in the Prison E-Filing
8 Program, and that he should submit all future documents to be filed with this Court
9 to the law librarian/designee for electronic filing. His expressed concern that his
10 Response would not be electronically filed as he had instructed appears to be
11 unfounded based on the Court's receipt of his document on August 27, 2024. ECF
12 No. 11. The Motion and all three Responses were considered without oral
13 argument on the date signed below.

14 MOTION FOR REVISION

15 A non-final order in an action "may be revised at any time before the entry
16 of judgment adjudicating all the claims and all the parties' rights and liabilities."
17 Fed. R. Civ. P. 54(b). Where reconsideration of a non-final order is sought, the
18 court has "inherent jurisdiction to modify it, alter or revoke it." *United States v.*
19 *Martin*, 226 F.3d 1042, 1049 (9th Cir. 2000); *see Am. Canoe Ass'n v. Murphy*
20 *Farms, Inc.*, 326 F.3d 505, 514 15 (9th Cir. 2003) (noting that motions for
21

1 reconsideration of non-final orders are not subject to the strict standards applicable
2 to motions for reconsideration of final judgment).

3 In the construed Motion for Revision, Plaintiff invites this Court to “dismiss
4 all the other cases but leave this one open.” ECF No. 10 at 1. He claims that he
5 has “proven that I am entitled to the relief I want. Extraordinary circumstances
6 obligate the district court.” *Id.* He further contends that “Federal courts took
7 advantage of my legal disability to strike me out 28 USC 1915. That’s bad faith
8 and not giving me a fourth strike would be too.” *Id.*

9 As noted in the Order to Show Cause, Plaintiff already has accumulated at
10 least four “strikes” under 28 U.S.C. § 1915(g). ECF No. 9 at 3. His conclusory
11 assertion of “extraordinary circumstances” is insufficient to overcome the
12 preclusive effects of 28 U.S.C. § 1915(g). *See Andrews v. Cervantes*, 493 F.3d
13 1047, 1055–56 (9th Cir. 2007). The Court finds no basis to revise the Order to
14 Show Cause. Therefore, the Motion for Revision, ECF No. 10, will be denied.

15 **RESPONSES TO ORDER TO SHOW CAUSE**

16 In all three of the construed Responses to the Order to Show Cause, Plaintiff
17 repeats his assertions that he suffered a severe brain injury as a juvenile. *See* ECF
18 Nos. 11, 12, and 13. He blames the State and the United States for his
19 incrimination and punishment, claiming he was not properly treated for the brain
20 injury in 2004, and he provides statistical information regarding Americans with
21 brain injuries. *Id.* In each construed Response, Plaintiff states that he wants to be

1 released to a hospital emergency room with “federal protection from the state of
2 Washington and a check” for \$100,000,000. *Id.*

3 Having reviewed Plaintiff’s submissions, the Court finds that he has failed to
4 demonstrate that he is eligible to proceed *in forma pauperis* under 28 U.S.C. §
5 1915(g), or that he was under imminent danger of serious physical injury when he
6 filed his complaint. *See Andrews*, 493 F.3d at 1055–56. Therefore, Plaintiff has
7 lost the privilege of filing this lawsuit *in forma pauperis*. Because Plaintiff did not
8 avail himself of the opportunity to pay the \$405.00 filing fee, he may not proceed
9 with this action.

10 Accordingly, **IT IS HEREBY ORDERED:**

11 1. Plaintiff’s construed Motion for Revision, **ECF No. 10**, is **DENIED**.

12 2. Plaintiff’s application to proceed *in forma pauperis*, **ECF No. 4**, is
13 **DENIED**.

14 3. This action is **DISMISSED WITHOUT PREJUDICE** for non-
15 payment of the filing fee as required by 28 U.S.C. § 1914.

16 4. The District Court Clerk shall **CLOSE** the file.

17 5. The Court certifies any appeal of this dismissal would not be taken in
18 good faith.

19 ///

20 ///

21 ///

IT IS SO ORDERED. The District Court Clerk is directed to enter this Order, enter judgment, and provide copies to Plaintiff.

DATED September 12, 2024.

s/ Rosanna Malouf Peterson
 ROSANNA MALOUF PETERSON
 Senior United States District Judge